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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,435	02/02/2007	Eliane Ubalijoro	1556.0440000/SRL/TAC	8911
26111	7590	08/05/2008		
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C. 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER BASKAR, PADMAVATHI	
			ART UNIT	PAPER NUMBER
			1645	
			MAIL DATE	DELIVERY MODE
			08/05/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/553,435	Applicant(s) UBALIJORO ET AL.	
	Examiner PADMA V. BASKAR	Art Unit 1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/22/07.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Claims 1-25 (2/2/07) are pending
2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked so as to form a single general inventive concept under PCT Rule 13.1. In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-5 and 13-18 drawn to a combination of polynucleotides for amplification and detection of a portion of a *L. monocytogenes hlyA* gene and a kit comprising said combination of polynucleotides

(Further restriction to one combination of polynucleotide with one probe is required, see para # 4).

Group II, claims 6-9 or 20-24 a pair of polynucleotide primers or probe

(Further restriction to one pair of primer or probe is required see para # 4).

Group III, claims 19 drawn to an isolated *L. monocytogenes* specific polynucleotide, SEQ.ID.NO:29.

Group IV, claims 10-12, drawn to a method of detecting *L. monocytogenes hlyA* gene using combination of polynucleotides

(Further restriction to one combination is required, see para # 4).

Group V, claims 25, drawn to a method of detecting *L. monocytogenes hlyA* gene using pair of polynucleotide primers.

(Further restriction to one pair of primer is required, see para # 4).

3. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special feature technical features for the following reasons:

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The technical feature of linking groups appears to be that they are all related to nucleic acid primers or probes or combination of polynucleotides. However, Cossart Pascale et al US Patent 5,523,205 disclose oligonucleotides useful, as primers or probes, for detecting hlyA gene of *Listeria monocytogenes* wherein:

i) the oligonucleotide PCRA (SEQ ID NO: 1) extends from nucleotide 696 to nucleotide 711 of the hlyA gene as depicted in the sequence set forth in SEQ ID NO: 1 of the present application, ii) the oligonucleotide PCRB (SEQ ID NO: 2) extends from nucleotide 1060 to nucleotide 1078 of the hlyA gene as depicted in the sequence set forth in SEQ ID NO: 1 of the present application, iii) the oligonucleotide PCRDO (SEQ ID NO: 3) extends from nucleotide 696 to nucleotide 719 of the hlyA gene as depicted in the sequence set forth in SEQ ID NO: 1 of the present application), and comprises 9 consecutive nucleotides of the sequence set forth in SEQ ID NO: 29 of the present application, iv) the oligonucleotide PCRG0. (SEQ ID NO: 4) extends from nucleotide 1060 to nucleotide 1085 of the hlyA gene as depicted in the sequence set forth in SEQ ID NO: 1 of the present application, v) a fragment of hlyA gene comprising the sequence set forth in SEQ ID NO: 30 (extending from nucleotide 763 to nucleotide 789 of the hlyA gene as depicted in the sequence set forth in SEQ ID NO: 1 of the group I invention.

Therefore, the technical feature of linking groups I-V does not constitute a special technical feature as defined by PCT Rule 13.2, as it does not define a contribution over the prior art and hence unity of invention is lacking. Accordingly, Groups I-V are not so linked by the same or a corresponding special technical feature so as to form a single general inventive concept.

Distinct Inventions

4. If Group 1 or Group IV is elected, further restriction to any one combination of polynucleotides, said combination comprising first and second polynucleotide primers with one probe comprising at least 7 nucleotides selected from SEQ ID NO: 1, 2-28, 31-32 and SEQ ID NO: 29 or 30 is required.

If Group II or Group V is elected, further restriction to a pair of primers comprising at least 7 nucleotides selected from SEQ ID NO: 1, 2-28, 31, 32, 34 or 36; or probe comprising at least 7 nucleotides selected from SEQ ID NO: 30, 33, 34, 35 or 36 is required because the inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the inventions

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lack the same or corresponding special technical features for the same reasons as set forth above for the Groups (see para # 3)

The special technical feature of Group I is considered to be combination of polynucleotides and a probe.

The special technical feature of Group II is considered to be primers or probes

The special technical feature of Group III considered to be isolated *L. monocytogenes* specific polynucleotide, SEQ.ID.NO:29.

The technical feature linking Groups IV and V is considered to be methods utilizing combination of polynucleotides and a probe or pair of primers

5. Applicant is required, in reply to this action, to elect one group and one invention from Para # 4 to which the claims shall be restricted. The reply must also identify the claims readable on the elected invention, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

6. Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. Papers should be transmitted via the PTO Fax Center, which receives transmissions 24 hours a day and 7 days a week. The transmission of such papers by facsimile must conform to the notice published in the Official Gazette, 1096 OG 30, November 15, 1989. The Right Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PMR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PMR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Padma Baskar Ph.D., whose telephone number is ((571) 272-0853. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 6.30 a.m. to 4.00 p.m. except First Friday of each bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisors, Shanon Foley can be reached on (571) 272-0898 and Robert B. Mondesi on (571)272-0956.

Respectfully,

/Padma V Baskar/

Examiner, Art Unit 1645